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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/577,983	05/02/2006	John C. Herr	00942-04	4977
34444 7590 07/07/2009 UNIVERSITY OF VIRGINIA PATENT FOUNDATION 250 WEST MAIN STREET, SUITE 300 CHARLOTTESVILLE, VA 22902				
EXAMINER				
HAND, MELANIE JO				
ART UNIT		PAPER NUMBER		
3761				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/577,983

**Applicant(s)**

HERR ET AL.

**Examiner**

MELANIE J. HAND

**Art Unit**

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 April 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 2 and 6-93 is/are pending in the application.
- 4a) Of the above claim(s) 58-81 and 83-89 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 6-57, 82 and 90-93 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 April 2009 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments with respect to claims 1-57, 82 and 90-93 have been considered but are moot in view of the new ground(s) of rejection prompted by applicant's amendment to the claims. However examiner will briefly address applicant's arguments herein. The arguments directed to the claim rejections under 35 U.S.C. 102 and 35 U.S.C. 103, with regard to the Simmet and Fleury references, consist entirely of mere statements that the references applied against the claims do not anticipate or render obvious amended claim 1, and several citations from applicant's specification in support of those statements. Applicant asserts that examiner has not correlated features of those prior art devices of Simmet and Fleury to the elements of the claimed invention they are cited against. Examiner disagrees; the non-final action clearly sets forth what elements of the prior art devices are cited against the claim elements. Since amended claim 1 is merely amended to incorporate the limitations of claims 3-5, those rejections in the non-final action clearly set forth those elements of the Simmet or Fleury device which anticipate claims 1 and 3-5. As applicant has provided no substantive arguments to the contrary, the rejections are maintained. The citations from the specification merely explain what the claimed invention does and how it does it and includes speculative assertions that no available device currently meets the limitations of amended claim 1 with regard to loss of any fractions of semen during ejaculation. This does not constitute a persuasive argument against the claim rejections.

### ***Drawings***

2. The drawings were received on April 23, 2009. These drawings are accepted.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 2, 6-10, 14, 15, 17, 19-25, 32, 35-46, 55-57 and 90-93 are rejected under 35 U.S.C. 102(b) as being anticipated by Simmet (U.S. Patent No. 5,961,503).

With respect to **claim 1**: With regard to the limitations "a device for collecting semen received from a glans penis of a male human individual", "whereby said tapered section accommodates the head of the glans penis" and "adapted for receiving the semen ejaculated from the glans penis", the device of Simmet meets all of the structural limitations of claim 1 as to collection of semen from a mammal (i.e. a boar), and thus is fully capable of collecting semen from the glans penis of a human male, and the tapered section of the device is considered herein to accommodate the head of said glans penis, and the receiving portion of the device of Simmet as claimed is considered herein to be adapted for receiving semen ejaculated from said glans penis, as the device disclosed by Simmet collects another type of mammalian semen. Simmet discloses a device for collecting boar semen. The device comprises a chamber defined by bag 20, said chamber 20 comprising a distal end, a proximal end, and a conduit extending between said distal end and proximal end (Fig. 4). The proximal end has a rim defining an aperture and said distal end having a surface that encloses said conduit. (Fig. 3) At least a portion of said conduit proximal to said proximal end has a tapered shape radially inward

defining a tapered section, whereby said tapered section accommodates a boar's penis. (Col. 4, lines 40-42) At least a portion of said conduit proximal to said distal end, specifically at seam 30 is adapted for receiving the semen ejaculated from the boar's penis (Fig. 4). The receiving portion, as can be seen in Fig. 4, defines a reservoir section for the semen. The tapered accommodation section disclosed by Simmet meets all of the claim limitations as to as to a portion near the proximal end that is tapered radially and accommodates the penis of a mammal. The reservoir section is bounded by the two rectangular segments 26,28 and seam 30 (Fig. 2) and is thus configured to prevent loss of any fractions of semen during ejaculation.

With respect to **claim 2**: The tapered accommodation section disclosed by Simmet meets the claim limitation as to a portion near the proximal end that is tapered radially and also accommodates the penis of a mammal, and is thus configured to the general external image of the head of a glans penis, as the structural features of such general external image are not explicitly claimed by applicant.

With respect to **claim 6**: Simmet discloses that the enclosure surface that encloses the distal end of the conduit is placed in a collection mug 54 which supports the surface and allows the chamber 20 to stand upward on the bottom surface of the mug 54. (Figs. 3,4)

With respect to **claim 7**: As can be seen in Fig. 4, the enclosure surface, which defines two legs extending out from the bottom of the chamber 20 in the figure, is at least substantially flat.

With respect to **claim 8**: As can be seen in Fig. 4, the longest cross-section of said reservoir section adjacent seam 30 disclosed by Simmett is equal to or less than the shortest cross-section of the tapered accommodation section.

With respect to **claim 9**: Simmet discloses that the enclosure surface that encloses the distal end of the conduit is placed in a collection mug 54 which supports the surface and allows the chamber 20 to stand upward on the bottom surface of the mug 54. (Figs. 3,4)

With respect to **claim 10**: As can be seen in Fig. 4 of Simmet, the enclosure surface, which defines two legs extending out from the bottom of the chamber 20 in the figure, is at least substantially flat.

With respect to **claim 14**: The device of Simmet further comprises at least one protruding member disposed on said chamber 20, said protruding member adapted to allow said chamber to stand upward on a surface, namely the bottom surface of mug 54. (Fig. 4)

With respect to **claim 15**: The protruding member disclosed by Simmet comprises at least one leg. (Fig. 4)

With respect to **claim 17**: As can be seen in Fig. 4, the longest cross-section of said reservoir section adjacent seam 30 disclosed by Simmett is equal to or less than the shortest cross-section of the tapered accommodation section.

With respect to **claim 19**: Applicant has not explicitly disclosed a meaning for the term "bell-shaped", therefore the claim is given its broadest reasonable interpretation. The tapered accommodation section of chamber 20 is considered herein to be bell-shaped. (Fig. 4)

With respect to **claim 20**: Applicant has not explicitly disclosed a meaning for the term "olive-shaped", therefore the claim is given its broadest reasonable interpretation. The tapered accommodation section disclosed by Simmet is considered herein to be olive-shaped, as it has a generally elliptical, arcuate or circular profile.

With respect to **claim 21**: Applicant has not explicitly disclosed a meaning for the term "hemispherical-shaped", therefore the claim is given its broadest reasonable interpretation. The tapered accommodation section disclosed by Simmet is considered herein to be hemispherical-shaped.

With respect to **claim 22**: Applicant has not explicitly disclosed a meaning for the term "ellipsoid-shaped", therefore the claim is given its broadest reasonable interpretation. The tapered accommodation section is ellipsoid-shaped. (Fig. 4)

With respect to **claim 23**: Applicant has not explicitly disclosed a meaning for the term "multi-faceted-shaped", therefore the claim is given its broadest reasonable interpretation. The tapered accommodation section disclosed is multifaceted-shaped inasmuch as it is by its nature shaped like an equivalent structure with intersecting linear sides that would roughly form the shape shown in Fig. 4, defining multiple intersecting facets as opposed to a continuous arcuate plane or profile.

With respect to **claim 24**: Applicant has not explicitly disclosed a meaning for the term "cone-shaped", therefore the claim is given its broadest reasonable interpretation. The tapered accommodation section is cone-shaped inasmuch as it has a curved outer surface that tapers inward.

With respect to **claim 25**: The tapered accommodation section disclosed by Simmet comprises at least one wall, i.e. the wall of chamber 20, wherein said at least one wall comprises a sloped shape.

With respect to **claim 32**: The device is used for artificial insemination of sows, and is thus fully capable of use in an artificial insemination clinic for humans.

With respect to **claim 35**: The chamber is defined by the bag 20 and is thus integrally formed.

With respect to **claim 36**: The device is integrally formed inasmuch as all of the structural features are formed from the same bag formed from rectangular elements 26,28.

With respect to **claims 37,38**: The chamber, when the filter 44 is present, is partially integrally formed inasmuch as the filter is a physically separate entity placed within the chamber of bag 20. (Fig. 4) Thus, since the chamber is partially integrally formed when filter 44 is present, the device is also partially integrally formed when filter 44 is present.



With respect to **claim 39**: The tapered accommodation section and said reservoir section are attachable to one another inasmuch as they are attached upon sealing of seam 30 attaching rectangular elements 26,28 together.

With respect to **claim 40**: The device disclosed by Simmet further comprises an adapter section in the form of disposable section 38 of bag 20 having filter 24. It is examiner's position that this portion 38 of bag 20 meets the limitation of an adapter section as applicant discloses in paragraph 0049 that the adapter section may provide any desired purpose. Simmet discloses that the filter 24 prevents undesirable material from entering the chamber of bag 20, which is considered herein to be "a desired purpose" as applicant also discloses that the adapter section may have a lining, wherein the filter performs a function identical to that of a lining.

With respect to **claim 41**: The device disclosed by Simmet further comprises at least one handle disposed on said device inasmuch as the device comprises a collection mug 54 with a handle into which bag 20 is placed. (Fig. 3, Col. 4, lines 24-27)

With respect to **claim 42**: The handle disclosed by Simmet comprises a protrusion. (Fig. 3)

With respect to **claim 43**: As can be seen in either of Figs. 3 and 4, the device disclosed by Simmet further comprises at least one grip ridge at the rim of bag 20 disposed on said device, specifically the edge of the portion of disposable portion 38 of the bag 20 that extends beyond the periphery to surround a portion of the outer surface of either the remainder of the bag or the mug 54.

With respect to **claim 44**: The adapter section 38 disclosed by Simmet comprises a collar, specifically all of the portion of disposable portion 38 that extends beyond the edge of either the rim of the bag 20 or the lip of mug 54.

With respect to **claim 45**: The adapter section 38 disclosed by Simmet receives a portion of the semen from the glans penis and therefore is considered herein to be configured to accommodate the glans penis.

With respect to **claim 46**: The collar disclosed by Simmet comprises a jacket, specifically the portion of the material of disposable adapter section 38 that surrounds the outer surface of either the bag 20 or the mug 54. (Figs.3,4)

With respect to **claim 55**: The device disclosed by Simmet further comprises at least one handle disposed on said device inasmuch as the device comprises a collection mug 54 with a handle into which bag 20 is placed. (Fig. 3, Col. 4, lines 24-27)

With respect to **claim 56**: The handle disclosed by Simmet comprises a protrusion. (Fig. 3)

With respect to **claim 57**: The device disclosed by Simmet further comprises at least one grip ridge at the rim of bag 20 disposed on said device.

With respect to **claim 90**: The device further comprises a base in the form of a folded portion of the bottom bag 20 as seen in Figs 3 and 4 that is in communication with said device. The base is adapted to allow said chamber to stand upward on a surface. (Fig. 4)

With respect to **claim 91**: The communication disclosed by Simmet comprises a connector located between the portion of bag 20 defining said chamber and the folded base. (Fig. 4)

With respect to **claim 92**: As can be seen in Fig. 4 of Simmet, the connector comprises at least one leg or stem.

With respect to **claim 93**: The connector disclosed by Simmet comprises a joining means in the form of said fold that joins the rest of bag 20 to the stem.

5. Claims 1, 33, 34, 50-54 and 82 are rejected under 35 U.S.C. 102(b) as being anticipated by Fleury (U.S. Patent No. 5,569,225).

With respect to **claim 1**: Fleury discloses a device for collecting semen received from a glans penis of a male human individual. The device comprises a chamber 14, said chamber comprising a distal end, a proximal end, and a conduit extending between said distal end and proximal end. The proximal end has a rim defining an aperture. (Fig. 1) The distal end has a surface adjacent valve 23 that is sealed to the lower end 16 of chamber 14 that encloses said conduit. (Col. 5, lines 25,26) At least a portion of said conduit proximal to said proximal end has a tapered shape radially inward defining a tapered section, whereby said tapered section accommodates female genitalia and thus is considered herein to be able to accommodate the head of the glans penis. (Col. 5, line 66 – Col. 6, line 5) At least a portion of said conduit

proximal to said distal end 16 is adapted for receiving the semen ejaculated from the glans penis, said receiving portion defining a reservoir section for the semen. (Col. 5, lines 36-41)

With respect to **claims 33,34**: The device disclosed by Fleury comprises a port in the form of valve 23 disposed on said reservoir section to allow for drainage or removal of the semen downward through said valve 23. (Col. 5, lines 31-33) It is examiner's position that this port thus necessarily also allows access to the semen by allowing the semen to flow out of chamber 14 into bag 25 where it can be removed via a syringe from injection site 13. (Col. 5, lines 60-63)

With respect to **claim 50**: The reservoir section disclosed by Fleury at least partially comprises at least one communication channel in the form of tube 32. (Fig. 1, Col. 5, lines 57,58)

With respect to **claim 51**: The at least one communication channel 32 disclosed by Fleury comprises tubing.

With respect to **claim 53**: The port 23 disclosed by Fleury is in communication with said at least one communication channel 32 via collection bag 25.

With respect to **claim 54**: The at least one communication channel 32 disclosed by Fleury comprises tubing.

With respect to **claims 52,82**: The device disclosed by Fleury comprises a port in the form of valve 23 disposed on said reservoir section to allow for drainage or removal of the semen downward through said valve 23. (Col. 5, lines 31-33) It is examiner's position that this port thus

necessarily also allows access to the semen by allowing the semen to flow out of chamber 14 into bag 25 where it can be removed via a syringe from injection site 13. (Col. 5, lines 60-63)

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. Claims 11-13 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simmet ('503).

With respect to **claim 11**: Simmet discloses at least in Fig. 4 that the longest cross-section of said reservoir section is less than or equal to the shortest cross-section of the tapered section and thus does not disclose an embodiment in which the longest cross-section greater than the shortest cross-section of the tapered accommodation section. However, applicant has not disclosed any criticality for this limitation. Therefore, this limitation is considered herein to be

directed to an obvious design choice, as either a cross section that is less than or equal to the accommodation section cross-section, or a cross-section that is greater, will still produce a tapered effect that meets the structural limitations of the tapered section as claimed and still facilitate the collection of semen equally well regardless of the relationship between the distal cross-section and the tapered accommodation section. It would therefore be obvious to one of ordinary skill in the art to modify the device of Simmet such that the longest cross-section of the reservoir section is greater than the shortest cross section of the tapered section with a reasonable expectation of success to provide a device that collects semen as intended.

With respect to **claim 12**: Simmet discloses that the enclosure surface that encloses the distal end of the conduit is placed in a collection mug 54 which supports the surface and allows the chamber 20 to stand upward on the bottom surface of the mug 54. (Figs. 3,4)

With respect to **claim 13**: As can be seen in Fig. 4, the enclosure surface, which defines two legs extending out from the bottom of the chamber 20 in the figure, is at least substantially flat.

With respect to **claim 18**: Simmet discloses at least in Fig. 4 that the longest cross-section of said reservoir section is less than or equal to the shortest cross-section of the tapered section and thus does not disclose an embodiment in which the longest cross-section greater than the shortest cross-section of the tapered accommodation section. However, applicant has not disclosed any criticality for this limitation. Therefore, this limitation is considered herein to be directed to an obvious design choice, as either a cross section that is less than or equal to the accommodation section cross-section, or a cross-section that is greater, will still produce a tapered effect that meets the structural limitations of the tapered section as claimed and still

facilitate the collection of semen equally well regardless of the relationship between the distal cross-section and the tapered accommodation section. It would therefore be obvious to one of ordinary skill in the art to modify the device of Simmet such that the longest cross-section of the reservoir section is greater than the shortest cross section of the tapered section with a reasonable expectation of success to provide a device that collects semen as intended.

9. Claims 16, 26 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simmet ('503) in view of Bar-Ami et al (U.S. Patent No. 6,129,214).

With respect to **claim 16**: The device comprises a collar as can be seen in Fig. 4 adjacent the opening of the chamber 20, however the protruding member disclosed by Simmet is separate and does not comprise a collar surrounding at least a portion of said chamber. Bar Ami discloses a sperm straining system comprising a chamber with a filter and collar in the form of plastic sheet 100 attached thereto to stabilize the chamber. Since the devices of Simmet and Bar Ami seek to solve a similar problem in the art (i.e. provide a freestanding sterile container for semen collection), it would be obvious to modify the device of Simmet so as to comprise a protruding member that is a collar as disclosed by Bar-Ami in addition to the legs with a reasonable expectation of success to provide additional stabilization on any surface without the need for a separate container. (e.g. the collection mug)

With respect to **claims 26,27**: Simmet does not disclose that the device further comprises a cover disposed on said chamber, i.e. the device. Bar-Ami discloses a semen collection container in the collective form of outer cell 100 and inner cell 110 placed inside outer cell 100, wherein the outer cell and inner cell having a cover in the form of lid 130. Bar-Ami discloses that

the lid prevents foreign debris from entering either the inner cell or the outer cell. ('214, Figs. 6a, 6b, Col. 10, lines 3-8, 62-64) Therefore, it would be obvious to one of ordinary skill in the art to modify the device of Simmet such that the device further comprises a cover disposed on said chamber as disclosed by Bar-Ami to prevent foreign debris from entering the chamber.

10. Claims 30 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simmet ('503) in view of Ericsson et al (U.S. Patent No. 5,068,089).

With respect to **claim 30**: Simmet does not disclose that the device further comprises a volume identification medium disposed on said chamber. Ericsson discloses a male fertility test kit comprising a collection tube having gradations. These gradations correlate volume of semen collected with the number of drops of testing reagent needed. ('089, Col. 8, line 65 – Col. 9, line 9) Therefore, it would be obvious to one of ordinary skill in the art to modify the device of Simmet such that the device further comprises a volume identification medium disposed on said container as disclosed by Douglas-Hamilton to notify the user of the volume collected for testing or other purposes.

With respect to **claim 31**: Simmet does not disclose that the device further comprises a volume identification medium disposed on said chamber. The volume identification medium disclosed by Douglas Hamilton comprises a calibrated region adapted for indicating volume that correlates volume of semen collected to number of drops of test solution. The motivation to modify the device of Simmet so as to further comprise a volume identification medium is stated *supra* with respect to claim 30.



11. Claims 47-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simmet in view of Yap (U.S. Patent No. 6,113,532).

With respect to **claim 47**: Simmet does not disclose that the adapter section comprises an ejaculation aid device. Yap discloses an ejaculation aid that can also be used as a collection device, similar to the adapter section 38 of bag 20 disclosed by Simmet that accommodates a user's gland penis and at least temporarily collects semen. Yap discloses that the ejaculation aid promotes maximum cleanliness. Therefore, it would be obvious to one of ordinary skill in the art to modify the device of Simmet by replacing the removable adapter section 38 with the ejaculation aid device disclosed by Yap to ensure maximum cleanliness during semen collection. ('532, Col. 2, lines 39,40)

With respect to **claim 48**: The adapter section of the device of Simmet as modified by Yap comprises a stimulation device in the form of inflatable balloon 1 for stimulating the glans. The motivation to modify the device of Simmet so as to comprise an ejaculation aid device as disclosed by Yap is stated *supra* with respect to claim 47. ('532, Col. 2, lines 39,40)

With respect to **claim 49**: The adapter section of the device of Simmet as modified by Yap and disclosed by Yap is adapted to be held by the individual or a partner inasmuch as Yap discloses that the walls of the device can be manually squeezed during use. ('532, Col. 2, lines 34-38)

12. Claims 28 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simmet in view of Velazquez (U.S. Patent No. 6,699,226).

With respect to **claim 28**: Simmet does not disclose that the device further comprises a tracking medium. Velazquez discloses a kit for collecting semen comprising a container defining a chamber upon which a region for storing desired information is disposed. Since the devices of Simmet and Velazquez seek to solve a similar problem in the art (i.e. provide a means for collecting semen) and the bar code disclosed by Velazquez provides a means for storing uniquely identifying information to distinguish samples from one another for proper analysis, it would be obvious to one of ordinary skill in the art to modify the device of Simmet so as to further comprise a tracking medium as disclosed by Velazquez with a reasonable expectation of success to ensure samples are properly identified and analyzed.

With respect to **claim 29**: Simmet does not disclose that the device further comprises a tracking medium. Velazquez discloses a tracking medium that comprises a printed bar code label. The motivation to modify the device of Simmet so as to further comprise a tracking medium disposed on the chamber as disclosed by Velazquez is stated *supra* with respect to claim 28.

### ***Conclusion***

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELANIE J. HAND whose telephone number is (571)272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Melanie J Hand/  
Examiner, Art Unit 3761